courts. *Held*, that the award is unenforceable. *Conant* v. *Arsenault*, 111 Atl. 578 (Me.).

By the overwhelming weight of authority an unexecuted agreement to arbitrate all claims arising out of a contract will be no bar to an action on the contract, as the agreement ousts the jurisdiction of the courts. *Thompson* v. *Charnock*, 8 T. R. 139; *Bauer* v. *International Waste Co.*, 201 Mass. 197, 87 N. E. 637; *Williams & Bro.* v. *Branning Mfg. Co.*, 154 N. C. 205, 70 S. E. 290. This rule seems based on the ancient desire of the courts to get and keep jurisdiction, and has not escaped criticism. See *Scott* v. *Avery*, 5 H. L. C. 811, 852; *United States Asphalt Refining Co.* v. *Trinidad Lake Petroleum Co.*, 222 Fed. 1006, 1007; see also 3 WILLISTON, CONTRACTS, §§ 1719, 1724. Statutes show that public policy now favors such arbitration agreements. See NEW YORK, COD. CIV. PROC. § 2366; ARBITRATION ACT, 52–53 VICT. c. 49. But at all times when the arbitration has been followed by an award, the award has bound the parties and has operated to merge the cause of action, thus barring further claims on the contract. *Burchell* v. *Marsh*, 17 How. (U. S.) 344; *Kidwell* v. *Baltimore & O. R. R. Co.*, 11 Gratt. (Va.) 676. This is so even if the arbitrators decide on a pure question of law, a clear ousting of the court's jurisdiction. *Ching* v. *Ching*, 6 Ves. Jr. 282; *Steff* v. *Andrews*, 2 Madd. 6. The principal case by denying recovery on an executed award is squarely opposed to reason, authority, and business convenience. The case if followed would mean that the parties could speculate at will on an award, accepting or rejecting it as its result proved favorable or not.

INFANTS — UNBORN CHILDREN — RIGHTS OF UNBORN CHILDREN IN THE LAW OF TORTS. — While the plaintiff was *en ventre sa mère*, his mother fell into a coal hole, negligently left unguarded by the defendant. Thereby the plaintiff was injured for life, and after birth sues for damages. *Held*, that the defendant's demurrer be overruled. *Drobner* v. *Peters*, 184 N. Y. Supp. 337.

For a discussion of the principles involved in this case, see NOTES, p. 549, *supra*.

INTERNATIONAL LAW — PRIZE — CARGO OF NEUTRAL VESSELS. — A cargo of magnesite was sold to the Dutch claimants by a corporation organized in Holland, but controlled by German shareholders. One half the purchase price was paid, and all risk of loss including loss by capture was to be borne by the purchasers. But if the goods should on inspection prove unsuitable for their business they could refuse to accept them. While en route to Holland in Dutch vessels, the cargo was seized by the British. *Held*, that the cargo is lawful prize. *The Vesta*, [1920] P. 385.

Under the modern English view the character of a corporation is determined by the nationality of its shareholders. *Daimler Co.* v. *Continental Tyre & Rubber Co.* [1916] 2 A. C. 307; *The Hamborn*, [1919] A. C. 993. Hence in order to defeat the right of prize it was necessary for the vendor to divest itself of all right, title, and interest in the goods. *The Ariel*, 11 Moo. P. C. 119. See 7 MOORE, DIG. INT. LAW, § 1184. Under the contract of sale by which all right to the goods and all risk of loss passed to the buyer, it is difficult to find a beneficial interest reserved in the seller. The mere right of the buyer to disclaim did not reserve an interest in the goods to the seller, since under the agreement there could be no disclaimer unless the goods were unsatisfactory, and then only at the option of the buyer. But even though the court's decision had been correct that an interest in the goods was reserved in the seller, the goods should nevertheless be protected since they were being transported in neutral vessels and were not contraband. See "Declaration of Paris," 7 MOORE, DIG. INT. LAW, § 1195. The only justification for the decision, therefore, is that the goods were made lawful prize by the English Reprisal Orders. See "Orders in Council,"

March 11, 1915, PULLING, MANUAL OF EMERG. LEGIS., Supp. III, 513. These reprisal orders, though entirely legal as against the enemy, are of no more than doubtful binding force upon the Prize Court in so far as they deprive neutrals of their rights under international law. See *The Zamora*, [1916] 2 A. C. 77, 90. If they do thus destroy the rights of neutrals, they are undoubtedly a fit subject for diplomatic protest. See "Note of Secy. of State to Ambassador W. H. Page," Oct. 21, 1915, 10 AM. JOURN. INT. LAW, 73, 84. See also 52 LAW JOURN. 146; PAGE, WAR AND ALIEN ENEMIES, 2 ed., 57.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — PROFESSIONAL BASEBALL. — Action for damages under the Sherman Anti-Trust Act against the professional baseball leagues on the ground that they were, through their contracts with players, acting in restraint of interstate trade. *Held*, that professional baseball is not trade within the meaning of the Act. *The National League of Professional Baseball Clubs, National Exhibition Co. et al.* v. *The Federal Baseball Club of Baltimore, Inc.*, 48 Wash. L. Rep. 819 (D. C.).

Congress has power to regulate commerce among the several states. See CONST., Art. 1, § 8. Early decisions under the commerce clause, seeking to determine what activities it included, seemed to embody a sale as the essence of interstate commerce. See *Paul* v. *Virginia*, 8 Wall. (U. S.) 168, 183. The fallacy of that view has been pointed out. See COOKE, THE COMMERCE CLAUSE IN THE FEDERAL CONSTITUTION, §§ 7–9. It has led to one palpably incorrect decision. See *Smith* v. *Jackson*, 103 Tenn. 673, 54 S. W. 981. The federal power to regulate was crystallized in the Sherman Anti-Trust Act of 1890, which prohibits the restraint of interstate commerce. See 26 STAT. AT L. 209; 3 U. S. S. A. 559. It has always been recognized that federal regulation was not intended to embrace every detail of interstate commercial activity. See *Hooper* v. *California*, 155 U. S. 648, 655. Thus, under the act, the presentation of grand opera by a company on tour has not been considered interstate commerce. *Metropolitan Opera Co.* v. *Hammerstein*, 162 App. Div. 691, 147 N. Y. Supp. 532. The same is true of producing plays in various states. *People* v. *Klaw*, 55 Misc. 72, 106 N. Y. Supp. 341. The true criterion by which to test the act's applicability has been laid down by Judge Learned Hand: Is the interstate feature essential or incidental to the business involved? See *Marienelli* v. *United Booking Offices*, 227 Fed. 165, 170. That the interstate shipment of players and paraphernalia is perforce interstate commerce does not bring the leagues therefore within the act. In baseball, the game's the thing, not the transportation incidental thereto. *American Baseball Club of Chicago* v. *Chase*, 86 Misc. 441, 149 N. Y. Supp. 6, *accord*.

JUDGMENT — SETTING ASIDE AND VACATING JUDGMENTS — NEGLIGENCE OF ATTORNEY. — A statute provides that a court may vacate a judgment taken against a party on account of his "mistake, inadvertence, surprise, or excusable neglect." (BURNS IND. STATUTES, 1914, § 405.) The attorney for the defendant relied on information given him by another attorney and did not appear at the time fixed for trial. The trial was called in his absence and judgment was given by default. Immediately thereafter the defendant appeared, set out a meritorious defense, and applied to have the judgment vacated. The application was overruled. *Held*, that the judgment be affirmed. *Krill* v. *Carlson*, 128 N. E. 612 (Ind.).

The majority of the courts in the United States regard the negligence of the attorney as the negligence of the client and refuse to vacate a judgment caused by the negligence of the attorney. *Welch* v. *Challen*, 31 Kan. 696, 3 Pac. 314; *Kreite* v. *Kreite*, 93 Ind. 583; *Lindsey* v. *Goodman*, 57 Okla. 408, 157 Pac. 344. See 1 BLACK, JUDGMENTS, 2 ed., § 341. In at least two jurisdictions,